

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BITMANAGEMENT SOFTWARE GMBH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

REDACTED VERSION

No. 16-840 C

Senior Judge Edward J. Damich

DEFENDANT’S MOTION FOR A STATUS CONFERENCE

In an effort to avert time-consuming and possibly unnecessary motion practice on the eve of trial, Defendant, the United States (“the Government”), requests a status conference to discuss Plaintiff’s refusal to produce relevant software license agreements with sixteen (16) specific organizations identified in a discovery request and one of Plaintiff’s proposed findings of fact.¹

The Government first requested production of these software license agreements on January 23, 2017, as part of the Government’s first set of requests for production of documents. Plaintiff objected to the request and refused to produce any agreements relating to its software other than the asserted copyrighted work. Nevertheless, on September 28, 2018, Plaintiff proposed a finding of fact that it sold licenses of other software to five organizations, and proposed many other findings that purport to compare the asserted copyrighted work with Plaintiff’s other software. These proposed findings appear directed to Plaintiff’s arguments regarding Plaintiff’s position in the Georgia-Pacific hypothetical negotiation, as the findings purport to support Plaintiff’s licensing experience and compare the value of the asserted copyrighted work with Plaintiff’s other products.

¹ This Motion is filed under seal because an attachment contains information that Plaintiff has designated as Protected Information pursuant to the Protective Order.

Counsel for the Government met and conferred with counsel for the Plaintiff, but the parties could not reach an agreement. Plaintiff has not withdrawn its prior objection, nor has it produced the licenses requested by the Government.

It is unfair for the Plaintiff to refuse to produce the requested licensing documents, despite placing those licenses at issue by relying on the licenses and its alleged licensing practices to support its claims. Plaintiff's continued refusal has harmed the Government's ability to rebut Plaintiff's claims and prepare its own case for trial.

Because Plaintiff has failed to abide by its obligations under this Court's Rules, the Government has drafted the attached motion to compel, which it is prepared to file. The filing of the motion at this late date is likely to disrupt the trial preparation schedule for both parties. Accordingly, we seek a conference with the Court to address the impact of the motion on the schedule.

Respectfully submitted,

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